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February 07, 2016

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington DC 20554

**Re: Amendment of Parts 15, 73, and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones; MB Docket No. 15-146, GN Docket No. 12-268**

Dear Ms. Dortch:

The Multicultural Media, Telecom and Internet Council ("MMTC") respectfully submits this letter to address the Commission's proposal to reserve the last channel in each market, or "vacant channel" for unlicensed use. We believe that this proposal would have a negative and disproportionately devastating impact on multicultural programming and broadcast station ownership by people of color. Specifically, over the last several decades, low power television (LPTV) has proven itself as among the most successful means for achieving these goals. MMTC believes that if the Commission moves forward with its unprecedented proposal to force open additional channels for unlicensed use by displacing LPTV stations—viewed in conjunction with the displacements resulting from the TV spectrum auction—that action will adversely affect and potentially extinguish LPTV stations, particularly in mid-sized and larger markets where spectrum availability is limited.

### **Minority Broadcast Ownership Continues to be at an All Time Low**

Currently, minority ownership of broadcast stations is at “disturbing” levels.<sup>1</sup> Minority and female entrepreneurs have spent decades building their businesses and serving their local audiences, but despite their effort to diversify our airwaves, they will bear the brunt of the inevitable consequences of the Commission’s vacant channel proposal. The best source of foreign language and other diverse programming, now offered only on LPTV stations, will simply disappear.

Many of the full power stations that are expected to surrender their spectrum in the Commission’s incentive auction are among the few full power stations providing foreign language and diverse programming. If this occurs, LPTV may be the only source of programming left for many minority communities after the auction. Compounding the decrease in minority ownership, the vacant channel proposal will leave many multilingual audiences without any options for news, information, and emergency programming in a language that they can understand.

### **LPTV Has Been a Gateway for Diverse Programming and Broadcast Ownership**

Since 1982, LPTV has offered minority and female entrepreneurs the most significant opportunities to enter the broadcast industry and broaden the base of media ownership. As the Commission’s own reports demonstrate,<sup>2</sup> LPTV stations are much more likely than full-power stations to be owned by minorities and women (See Table 1).

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<sup>1</sup> See Remarks of Commissioner Mignon L. Clyburn before the LULAC Legislative Conference (Feb. 9, 2011), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-304574A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-304574A1.pdf) (last visited Feb. 2, 2016).

<sup>2</sup> See 2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report on Ownership of Commercial Broadcast Stations, 29 FCC Rcd 7835 (2014) (“Minority Ownership Report”).

**Table 1. Comparison of Commercial Full Power TV Stations vs All LPTV Stations**

	% Owned by Women	% Owned by Hispanics or Latinos	% Owned by All Racial Minorities <sup>3</sup>	% Owned by Blacks or African Americans	% Owned by Asians
<b>All Commercial Full Power TV Stations</b>	6.3%	2.9%	1.9%	0.6%	0.4%
<b>All LPTV Stations</b>	14.9%	10.0%	3.3%	1.3%	1.1%

Source: 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report on Ownership of Commercial Broadcast Stations, 29 FCC Rcd 7835 (2014) ("Minority Ownership Report").

As shown in the Table, women and minorities are two to three times more likely to own an LPTV station than to own a full power television station. These female- and minority-owned stations, in turn, are far more likely to offer programming targeting underserved, diverse, and foreign language audiences.<sup>4</sup> Moreover, LPTV ownership has been a springboard for minorities into ownership of full power television stations, as well as radio stations, and it provides a training ground for minorities aspiring to other managerial positions in the broadcast industry. As other initiatives to bolster minority ownership of broadcast stations have stalled before the Commission, LPTV has generated successful minority and women entrepreneurs that help diversify their airwaves.

### **The Commission's Vacant Channel Proposal Will Further Hamper LPTV's Viability**

MMTC believes that the Commission must consider the direct and indirect consequences of its vacant channel proposal on the future viability of LPTV broadcasters. As other commenters in this proceeding have convincingly shown, reserving one or more channels in the TV band for unlicensed white spaces devices will result in hundreds of low power stations and translators

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<sup>3</sup> The Minority Ownership Report classified an additional 14 full power television stations as owned by an individual of Asian descent as a result of the bankruptcy of Young Broadcasting, Inc. By the time the Commission released the Minority Ownership Report, however, that individual no longer held a majority interest in those stations. As a result, the above chart does not include those 14 television stations in the above calculations for racial minorities and Asians. See Minority Ownership Report n.16.

<sup>4</sup> See Community Broadcasters Association, *Diversity Defined: A Report on the Diversity and Localism Provided by Class A and Low Power Television Stations*, at 14, 17 (2009), available at <http://www.spectrumrevolution.org/wp-content/uploads/2010/10/LPTV-Industry-Survey-1.pdf> (last visited Feb. 2, 2016) (finding that 34% of LPTV and Class A stations provide foreign language programming and 41% are not affiliated with a national network).

going dark across the country.<sup>5</sup> It is clear that after the incentive auction, whether the Commission clears 84 MHz, 144 MHz or some other amount of spectrum, fewer channels will be available for low power television stations that are displaced as a result of the auction and are unable locate alternate spectrum, especially in mid-sized and larger markets. Thus, by eliminating one or two additional channels in the television band, the vacant channel proposal would further exacerbate the impact of the spectrum crunch on LPTV owners.

In the most comprehensive study of this issue, the National Association of Broadcasters (NAB) has shown the disastrous effect of the Commission's proposals on LPTV licensees. According to NAB's study, if the Commission clears 120 MHz spectrum in the incentive auction, more than 688 low power stations and translators will be forced off the air.<sup>6</sup> More importantly, if the Commission adopts its proposal and reserves one or two vacant channels for unlicensed services, another 433 LPTV and translators will also potentially go dark. Translators, many of them community-owned, enable viewers who are in rural areas and do not choose or cannot afford to pay for cable or other multichannel media, to enjoy television reception from stations in distant markets.

While we understand the need to experiment with unlicensed uses, the Commission and various high tech conglomerates have downplayed the impact of this unprecedented proposal on LPTV by claiming that at least two vacant channels will remain in most markets after the repack.<sup>7</sup> MMTC finds this attempt to reassure the LPTV community as missing the point entirely. The question that the Commission should be asking is whether these two remaining channels in each market will be enough for the hundreds of LPTV licensees who want to continue to broadcast and serve the public.

In light of the potential for the devastating loss of LPTV diversity, we strongly recommend that the Commission consider the impact of this proposal at this critical juncture in minority broadcast ownership and programming, rather than making matters worse by giving away the last channels in every market for unlicensed use.

Adopting the vacant channel proposal without analyzing and considering these foreseeable harms would be both arbitrary and capricious in violation of the Commission's duties under the Communications Act of 1934 and Section 6403(b)(5) of the Spectrum Act. By disregarding and downplaying the substantial harms to LPTV licensees and their audiences, the Commission is "entirely fail[ing] to consider an important aspect of the problem."<sup>8</sup> Moreover, adopting a policy

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<sup>5</sup> See, e.g., Comments of the National Association of Broadcasters ("NAB Comments") in MB Docket No. 15-146, 10-18 (Sept. 30, 2015), available at <http://apps.fcc.gov/ecfs/document/view?id=60001325691> (last visited Feb. 2, 2016).

<sup>6</sup> NAB Comments at 13.

<sup>7</sup> E.g., *Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones*, 30 FCC 6711, ¶ 11 (2015).

<sup>8</sup> See *Motor Veh.Mfrs. Ass'n v. State Farm Ins.*, 463 U.S. 29, 43 (1983).

that would handicap LPTV—a service with a proven track record of diversifying the television airwaves and promoting minority ownership—runs afoul of the Third Circuit’s instructions in *Prometheus I*:

Repealing its only regulatory provision that promoted minority television station ownership without considering the repeal’s effect on minority ownership is also inconsistent with the Commission’s obligation to make the broadcast spectrum available to all people ‘without discrimination on the basis of race.’<sup>9</sup>

If the Commission adopts the vacant channel proposal and elevates unlicensed services over the priority access right of the licensees of LPTV stations, it would raise far-reaching concerns about the Commission’s commitment to diversifying the television airwaves. Failing to acknowledge the devastating impact on minority ownership and then taking no action to avoid this result would be a serious mistake. Therefore, MMTC submits that the public interest requires the Commission to consider the impact on LPTV broadcasters and to abandon its vacant channel proposal.

Respectfully submitted,

*Kim Keenan*

Kim M. Keenan

President and Chief Executive Officer

cc: Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O’Reilly

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<sup>9</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 421, n.58 (3d Cir. 2004) (citing 47 U.S.C. § 151).